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Commission of Inquiry re:

Provincial Judge Harry J. Williams

The Honourable
Justice Sydney L. Robins

Commissioner

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Harry J. Williams.

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Inquiry re:

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The Honourable
Mr. Justice Sydney L. Robins

Commissioner

1978



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Pauline G. G. S. H.



ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

TO: The Honourable Mr. Justice
Sydney Robins
Toronto

G R E E T I N G :

WHEREAS pursuant to the provisions of subsection 1 (c) of section 8 of The Provincial Courts Act, R.S.O. 1970, Chapter 369, the Judicial Council for Provincial Judges on 18th August, 1977, reported to the Attorney General that the said Judicial Council for Provincial Judges had investigated a complaint concerning the conduct of Provincial Judge Harry J. Williams and recommended to the Attorney General that action be taken in the manner prescribed in The Provincial Courts Act to remove Provincial Judge Harry J. Williams from office;

NOW KNOW YE that We, pursuant to the provisions of subsection 2 of section 4 of the said Act, DO HEREBY APPOINT you, the said Mr. Justice Sydney Robins, one of Our Justices of the Supreme Court of Ontario, to be Our sole Commissioner to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Harry J. Williams and respecting his ability or inability to perform his duties properly including alleged incidents involving the said Judge and one Lynne Martineau;

AND WE DO HEREBY ORDER that you, Our said Commissioner, shall have the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things

as you deem requisite for the full examination of the matters into which you are appointed to examine;

AND WE DO HEREBY FURTHER ORDER that all Our Ministries, Boards, Agencies and Committees shall assist you, Our said Commissioner, to the fullest extent in order that you may carry out your duties and functions, and that you shall have authority to engage such counsel, investigators and other staff as you deem proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet;

TO HAVE, HOLD AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our Province of Ontario to be hereunto affixed.

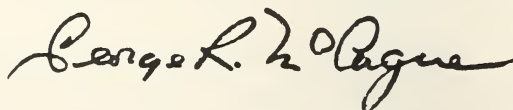
WITNESS:

THE HONOURABLE PAULINE M. McGIBBON,
An Officer of the Order of Canada,
Bachelor of Arts,
Doctor of Laws, Doctor of University,
Bachelor of Applied Arts (Theatre),
Honorary Fellow Royal College of Physicians and Surgeons
(Canada),

LIEUTENANT GOVERNOR OF OUR PROVINCE OF ONTARIO,

at Our City of Toronto in Our said Province, this twenty-first day of September in the year of Our Lord one thousand nine hundred and seventy-seven and in the twenty-sixth year of Our Reign.

BY COMMAND

A handwritten signature in black ink, appearing to read "George R. H. O'Brien", written in a cursive style.

MINISTER OF GOVERNMENT SERVICES



Executive Council

Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 21st day of September, A.D. 1977.

The Committee of Council have had under consideration the report of the Honourable the Attorney General, wherein he states that,

WHEREAS pursuant to the provisions of subsection 1 (c) of section 8 of The Provincial Courts Act, R.S.O. 1970, Chapter 369, the Judicial Council for Provincial Judges on 18th August, 1977, reported to the Attorney General that the said Judicial Council for Provincial Judges had investigated a complaint concerning the conduct of Provincial Judge Harry J. Williams and recommended to the Attorney General that action be taken in the manner prescribed in The Provincial Courts Act to remove Provincial Judge Harry J. Williams from office.

The Honourable the Attorney General therefore recommends that pursuant to the provisions of subsection 2 of section 4 of the said Act, a Commission be issued appointing the Honourable Sydney Robins, one of Her Majesty's Justices of the Supreme Court of Ontario, a Commissioner to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Harry J. Williams and respecting his ability or inability to perform his duties properly including alleged incidents involving the said Judge and one Lynne Martineau.

The Honourable the Attorney General further recommends that the Honourable Mr. Justice Sydney Robins shall have the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as he deems requisite for the full examination of the matters into which he is appointed to examine.

And the Honourable the Attorney General further recommends that all Government Ministries, Boards, Agencies and Committees shall assist the Honourable Mr. Justice Sydney Robins to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet.

The Committee of Council concur in the recommendations of the Honourable the Attorney General and advise that the same be acted on.

Certified,

A handwritten signature in dark ink, appearing to read 'R. A. A. A.', is written over the printed name of the Deputy Clerk.

Deputy Clerk, Executive Council.



TO HER HONOUR THE LIEUTENANT
GOVERNOR OF THE PROVINCE OF ONTARIO

May It Please Your Honour:

Pursuant to my appointment by Order-in-Council No. 2648/77 to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Harry J. Williams and respecting his ability or inability to perform his duties properly including alleged incidents involving the said Judge and one Lynne Martineau, I now submit my Report.

Sydney L. Robins
Commissioner

February, 1978.



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Introduction

On July 13th, 1977, an Ottawa prostitute was arrested on a charge of keeping a common bawdy house. In her possession was the name, address and telephone number of a judge of the Provincial Court (Criminal Division) of the Judicial District of Carleton — His Honour Judge Harry J. Williams. That disclosure led to a complaint concerning the conduct of Judge Williams and eventually to the appointment of this Commission charged “to inquire into and report upon the circumstances relating to the behaviour or misbehaviour of Provincial Judge Harry J. Williams and respecting his ability or inability to perform his duties properly including alleged incidents involving the said Judge and one Lynne Martineau”.

The appointment and tenure of a provincial judge in Ontario is governed by the provisions of The Provincial Courts Act, R.S.O. 1970, c. 369. Appointment to office is made by the Lieutenant Governor in Council on the recommendation of the Attorney-General (section 3). Removal from office before a judge has attained retirement age may be ordered by the Lieutenant Governor in Council “for misbehaviour or for inability to perform his duties properly” but only if the circumstances respecting the misbehaviour or inability are first inquired into and reported upon by one or more judges of the Supreme Court appointed by the Lieutenant Governor in Council for such purpose and reasonable notice of the inquiry is given and the judge afforded an opportunity, by himself or his counsel, of being heard and cross-examining the witnesses and producing evidence on his own behalf (section 4(1) (2)). It is within the context of this legislation that this Commission was appointed and has been conducted.

The Judge's Background

Harry J. Williams is a married man, 63 years of age, the father of three grown children, living with his wife in the City of Ottawa. After overseas service in World War II, he resumed his education, graduated from the University of Toronto and the Osgoode Hall Law School and, in 1952, was admitted to the Bar of Ontario. Shortly afterwards he moved to Ottawa where he engaged in the general practice of law as a private practitioner until his elevation to the bench. He was appointed a Deputy Magistrate in 1964 and later in that year, a Magistrate for the County of Carleton. He has served in that capacity ever since. I should perhaps note that upon the enactment of The Provincial Courts Act in 1968 magistrates in Ontario became known as provincial judges and, accordingly, he has since been a Provincial Judge of the Provincial Court (Criminal Division) of the Judicial District of Carleton.

From the evidence before me it appears that Judge Williams as a judge has gained the respect and affection of his colleagues and the members of the bar practising in the Provincial Court. By all accounts he has been a good judge. The conduct that forms the subject matter of this inquiry does not relate to misbehaviour in the exercise of official judicial functions — Judge Williams' past performance on the bench is not in question. What is in question is his personal conduct off the bench and the way in which it affects or may appear to affect his judicial office and his ability to discharge the functions of a judge engaged in the administration of criminal justice.

The Martineau Episode

The Judge's relations with Lynne Martineau were in the main admitted and may be dealt with briefly. In May, 1977, he telephoned, not for the first time, an agency which euphemistically calls itself an "escort service" by the name of "Tania's Escort Service". His purpose was to procure the sexual services of a prostitute. To do so he was required to furnish a name, the address to which the prostitute was to be sent, and the telephone number through which the transaction would be confirmed by return call from the agency. The information he provided was "Harry, 1 Nicholas Street, 237-5894". 1 Nicholas Street is the location, and has been for many years, of the Criminal Division of the Provincial Court in Ottawa. It is the building in which its judicial proceedings are conducted, its courtrooms, judges' chambers and administrative offices are located. The telephone number is the unlisted night line to his chambers.

Tania's directed a prostitute, Grace Lynne Martineau, to 1 Nicholas Street where, at about 9 o'clock that evening she was met at the main entrance door by Judge Williams. He escorted her up a flight of stairs to his chambers where, stated succinctly, they spent an hour together during which they had a drink and sexual intercourse; she was paid \$70.00 of which she in turn gave \$40.00 to the operator of Tania's. Three weeks later, this time calling her directly, the Judge again asked her to his chambers with the same object in mind and a similar scene was enacted.

This was not the first or only prostitute to call upon the Judge in his chambers; I shall refer to the evidence of earlier liaisons in a moment. But I think it relevant at this point to interrupt the narrative to comment upon the manifest impropriety of the Judge's conduct in employing his judicial chambers as a place of assignation. Indeed no argument was advanced on his behalf seeking to support or condone such behaviour; on this aspect of the inquiry it was contended that Martineau was not conscious either of the fact that he was a judge or that she was plying her trade in judicial surroundings; to those contentions I shall return later. But for the Judge to have permitted the facilities of the justice system to be used for the purposes of prostitution demonstrates, morality aside, a lack of

respect for the court, a disregard of his responsibility for maintaining its dignity and integrity, and an insensitivity to his position as a judge.

Returning to the facts, it appears that at the last meeting in the Judge's chambers to which I have referred, Martineau told him of her intention to quit Tania's to work at "another place" — "I told him I was going to work for someone else". Because the details of her new employment had evidently not yet been settled, the Judge gave her his full name and the telephone number — 237-5890 — through which she could reach him during the day, presumably so she might in due course inform him where she was working. That telephone number is the general public line to the Provincial Court. It is answered "Provincial Court Office".

In June, 1977, Martineau went to work for one Sandy Mitchell (or Cunningham), the operator of another prostitution business, who provided her with the use of an apartment — Apartment 401, 211 Bell Street, Ottawa — in which to service their clientele; Mitchell received \$35.00 of Martineau's \$70.00 or \$75.00 fee. In early July, Judge Williams arranged an appointment with her to attend at that apartment for the purpose of sexual intercourse. Within days of that assignation, Martineau was arrested and charged with keeping a common bawdy house at Apartment 401, 211 Bell Street, Ottawa, contrary to section 193(1) of the Criminal Code. She pleaded guilty to the charge and was convicted and fined \$300.00.

On the day she was taken into custody, July 13th, 1977, the police, as I alluded earlier, found Judge Williams' name and court telephone number on one of her index cards and reference to him in her "trick book". This information impelled them to investigate the situation and report on it. As a consequence on July 20th, 1977, Chief Judge F.C. Hayes of the Provincial Courts (Criminal Division) informed Judge Williams that the matter of his conduct had been referred by the Attorney General to the Judicial Council for Provincial Judges pursuant to the provisions of The Provincial Courts Act and pending consideration of the matter Chief Judge Hayes did not consider it appropriate that he should continue to sit as a judicial officer. He has not done so since.

Once Judge Williams' personal conduct had been ascertained its possible impact on his judicial function could not be ignored. Inevitably there was apprehension of improper influence and particularly so among law enforcement officers. As it happens, there were extensive police investigations underway in Ottawa at the time into prostitution rings and related crimes and charges arising from these investigations would be tried mainly by the Provincial Court of which the Judge was a member. To repeat what I have already indicated, there is no evidence to suggest that Judge Williams was in any way compromised or subjected to any improper influence or has been guilty of any misbehaviour in the exercise of his judicial duties. But clearly the Judge's personal activities, once they were known, created suspicion that his judicial activities might be influenced by prostitutes or those with whom they are connected.

To return to Bell Street, Judge Williams in visiting that apartment knew or should have known it to be a place kept, occupied or resorted to by one or more persons for the purposes of prostitution; in short, a common bawdy house within the meaning of the Criminal Code. He should also have recognized that if he were found there he would have had no lawful excuse for being there and would himself have been guilty of an offence under the Criminal Code. The suggestion that he thought this place "her home" rather than her place of business is not consistent with the evidence of their relationship. But whether his conduct may have passed the borders of criminality need not be decided. That visitation was, or could be interpreted as being condonation by him of a type of illegal activity that falls within the absolute jurisdiction of his court under the Criminal Code — an offence of a kind that he as a judge must regularly try in the course of his judicial duties.

The Trick Books

Trick books, as they are called, are important tools of the trade of prostitution. Essentially, they contain lists of customers and information respecting them such as, addresses, telephone numbers and coded fee notations; those produced here appear to be well organized business-like documents arranged alphabetically and maintained on a current basis. They provide a source of reference material and are used to check, screen and confirm requests for services; they are sometimes used for solicitation purposes; and apparently they constitute a commercial asset of saleable value.

Those of Tania's Escort Service become significant in considering Judge Williams' behaviour apart from the Martineau incidents. Before explaining why this is so, I might preface my observations by noting that the Judge's counsel in discussing "misbehaviour" with the members of the legal community who testified on Judge Williams' behalf, predicated his questions to each of them on the basis that the factual circumstances here were restricted to the Judge's having "had on three occasions during the summer of 1977 intercourse with a prostitute". But the evidence is not so restricted and goes beyond that hypothesis. The conduct which forms the subject matter of this inquiry encompasses more than an isolated illicit amatory adventure. Judge Williams over a prolonged period has consorted with prostitutes and engaged in conduct of the kind illustrated by the Martineau affair. That conclusion, I am satisfied, is compelled by the evidence and the inferences which on the balance of probabilities can fairly and reasonably be drawn from it, and also, I am obliged to say, from my assessment of the testimony of Judge Williams himself both in what he said and the manner in which he said it.

Before 1974 Tania's was owned and operated by a woman named Ria Leydeckers who, in that year, sold the business to an Edward Chomyshyn who remains its owner to-day. Among the assets included in his purchase was the trick book, in this case a series of nicely typed loose leaf indexed pages. Judge Williams is listed there as "Harry, 1 Nicholas, 237-5894". On September 8th, 1976, the Ottawa Police executed a warrant to search Tania's and other Chomyshyn premises; they confiscated this book, and an

updated version of it to which I shall refer, and that material has been in their possession since.

Judge Williams, as I understand his evidence, denies any contact with Tania's which could explain his inclusion in a customers' list which was drawn by 1974. He cannot account for his name, address and private unlisted number being there and suggests that "anybody could get that information" and the entry is not authentic. I recognize that there are indeed many ways the name of a person (and more likely a person in public position) may falsely be inserted for a variety of motives in a prostitution trick book. The probative value of any entry must be determined according to the circumstances of a given case. From the circumstances of this one, given his later admitted contacts with Tania's when he provided the identical name, address, and private number and given also the general nature of his testimony of past liaisons, I have no doubt that he was accurately recorded as a customer of Tania's before Chomyshyn's 1974 purchase; and, it is clear, his judicial chambers were designated as the place of assignation.

Chomyshyn personally operated the business from the date he purchased it until the summer of 1976 and during that time exhibited considerable interest in and curiosity about the customers' lists. He "checked out" his customers against telephone directories and, I expect, other sources; he was in charge of incoming calls and he confirmed them by return call and use of the customers' lists. Based on his knowledge and experience in the operation of this business he prepared a revised up-to-date edition of the original lists by adding customers and deleting others. The Judge's name remained on the roster with "1 Nicholas" amended slightly to "1 Nicholas Street". Judge Williams, in testimony that was vague and equivocal, acknowledged calling Tania's during this time; he also acknowledged to Martineau that he had been "seeing another girl" from Tania's. On all the evidence it appears indisputable that he continued during this period to employ the services of Tania's for the purpose of prostitution with his judicial chambers remaining the place of assignation.

During the summer of 1976 Chomyshyn arranged with a Bill

Boone to have him operate Tania's on the understanding that they would split the profits equally between them. Boone operated the agency for a short period during which he used the updated customers' lists and made additions to them himself; they were returned to Chomyshyn when Boone's management was terminated. Chomyshyn next "franchised" the business for \$150.00 a day to one Josephus Lewis who he had previously employed as a driver to deliver "hostesses" to their appointments. It was about this time that the police seized the trick books and no further similar records are available to this inquiry. In his contacts with Tania's there is every likelihood that Judge Williams made arrangements directly with Chomyshyn, Boone or Lewis, certainly with someone representing them, for the sexual services of a prostitute.

There is one further book to which brief reference may be made. It contains the notation "Williams (Harry) Beacon"; "Beacon" refers to The Beacon Arms Hotel in Ottawa. The prostitute in whose possession this book was discovered, and who used and updated it, claims to have inherited it years ago from another prostitute with whom she had lived but whose full name she does not know; she denies having made the entry or knowing Judge Williams. On this evidence, I attach no weight to the document. But, in any event, Judge Williams, as I interpret his evidence from my impression of it, does not deny past assignations with prostitutes at The Beacon Arms Hotel while a judge.

It is apparent that the owners and operators of Tania's, no matter the subterfuge, are engaged in the business of procuring prostitutes for illicit sexual intercourse. They are persons living wholly or in part on the avails of prostitution contrary to the Criminal Code. This the Judge must have known; it was implicit in his dealings with them. In the case of Martineau, for example, he knew she was working for Tania's and part of his fee was being paid to Tania's. Later when she left Tania's for Bell Street, he knew in visiting her there that she was employed by someone who would receive part of the proceeds of his payment. In his dealings, direct or indirect, with those who live on the avails of prostitution, Judge Williams can be taken as condoning a criminal activity and exhibiting a disregard and disrespect for the criminal law which he as a judge is bound to uphold and administer.

Knowledge of the Judge's Conduct

I turn now to an issue adverted to earlier. Lynne Martineau testified at the hearing that she was unaware of the fact that Harry Williams was a judge. I cannot believe that. It is not consistent with, indeed it is quite contrary to, her prior statements to the investigating police officers. Furthermore, it is undisputed that she knew his full name, was given the public number to the Provincial Court office and, in fact, telephoned him there during court hours. He did not conceal anything in his chambers which might have indicated he was a judge and, indeed, during their encounters his distinctive judicial robes were in her full view. I find it inconceivable in all the circumstances that she could have been oblivious to the status of her new client. I am satisfied she was not.

Judge Williams himself appears to have been to all intents and purposes totally indifferent as to whether she knew who he might be. When he made arrangements with Tania's, for instance, he could not have known if the prostitute assigned to him (or her driver) had ever been present at the Provincial Court, perhaps in the very court over which he presided, as an accused, a witness, or a spectator — hardly unlikely possibilities. Considering the almost complete lack of concern he demonstrated through the Martineau episode, it is not unreasonable to assume similar unconcern in the case of other assignments. It is difficult to envisage a prostitute, watchful and wary as her occupation requires her to be, attending at the Judge's office in the court premises and being unaware of where she was and with whom. The fact which is relied upon, that the Provincial Courts occupy only a part of 1 Nicholas Street and other tenants are located in the building as well, seems to me of no merit in the factual circumstances existing here.

Professional confidentiality cannot be expected in a prostitute client relationship. A prostitute's knowledge that a judge, a judge of the Criminal Division of the Provincial Court, is a client would almost certainly be the subject of discussion in the circle in which she travels. It follows that it would be known by her associates and her employers who operate this squalid business. Such people, people who live off the avails of prostitution, the procurers, pimps and

panderers, would be alive to the import of this information. They are no strangers to the Criminal Division of the Provincial Courts, they move in a criminal milieu, and their criminal activities generally fall within its jurisdiction. Such intelligence affords them the opportunity for blackmail, the chance to exercise or try to exercise or boast that they have exercised improper influence upon the judicial actions of a judge in cases where they or their confederates may have been involved. I am satisfied that no such approach was made here and I trust that if an attempt had been made it would not have succeeded. But the risks and dangers to the administration of criminal justice are manifest. This was recognized by counsel for the Judge in his submissions when, in discussing the question of Martineau's knowledge, he said: "If she knew and she was out on the street with that undesirable crowd in the market and so on and so forth, and spreading the gospel that she had a judge, or whatever the term might be, that she had liaison and intercourse with a judge, I think that could be most damaging The risks become much greater and he becomes much more vulnerable".

The Night of July 20th, 1977

There is one last incident to be related. July 20th, 1977, it will be recalled, was the date on which Judge Williams was informed that he would have no further judicial assignments pending consideration of his conduct by the Judicial Council. Judge Williams was advised of this by letter from Chief Judge Hayes which he received at 9 o'clock that evening. This was the first he heard of the matter. The letter said, in part:

"I have been advised of certain information alleging a course of personal conduct by you which if substantiated would appear to be inconsistent with your position as a judicial officer.

The matter of this conduct has been referred to the Judicial Council by the Attorney General under the relevant provisions of the Provincial Courts Act. Pending consideration of this matter by the Judicial Council, I do not consider it appropriate that you should continue to sit as a judicial officer."

Judge Williams testified that when he received that letter he had no knowledge of the course of personal conduct to which the Chief Judge referred. "I had no idea what it was about" he said. In view of that his activities later that night are puzzling indeed.

P.C. Brian Scharf who is attached to the morality section of the Ottawa Police Force was on duty around midnight on Clarence Street in the market area of the city where he had the St. Lucien Hotel under observation; the hotel is described by him as "a place frequented by prostitutes and clients"; it is treated by Tania's as "out of bounds" for its girls. Shortly after midnight he observed Judge Williams leaving the hotel and walking towards his car. Entirely by coincidence, P.C. Scharf was one of the officers who a week earlier had arrested Lynne Martineau for keeping the bawdy house on Bell Street; it was he who discovered Judge Williams' name and the Provincial Court office number and who investigated the matter of her relationship with the Judge. With this background his existing suspicions, perhaps not unnaturally, were heightened in seeing the Judge

at this hotel. He decided to follow him.

He made the following observations. Judge Williams drove around the market area for five to ten minutes; he then proceeded to The Beacon Arms Hotel where he stayed for 30 minutes during which time he was observed in and around the lobby and was seen speaking to a person who appeared to be a hotel employee. On leaving The Beacon Arms Hotel he drove around the area of the Skyline Hotel for approximately 5 minutes; he then proceeded 3 or 4 miles in the direction of Hull, made a U turn, stopped at a telephone booth to make a very brief call, drove to a vacant lot at the corner of Raymond and Bell Streets where he parked his car. The Judge then walked to the apartment building at 211 Bell Street, entered the lobby, reappeared within a minute or two, left the building, returned to his car, drove away. No further relevant observations were made. During the course of the surveillance of P.C. Scharf (and two other officers who joined him at The Beacon Arms Hotel) nothing unusual was observed in the manner of either the Judge's walking or driving.

Rather than summarize Judge Williams' response to this evidence of his actions that night I shall set forth the questions directed to him by his counsel on this subject and his answers:

“Q. Did you know what this (the Chief Judge's letter) was about?”

A. No, I had no idea what it was about.

Q. So, you walked around, and what happened after that?

A. Well, then, I went into a number of hotels. I went into the, what was called the Carleton Towers. I think it is now called the Four Seasons. I probably went into a number of hotels.

Q. Did you have any drinks at these hotels?

A. Oh, yes.

Q. Alcohol?

A. Yes, I had a number of drinks.

Q. Do you remember going to the Chez Lucien Hotel?

- A. *No, I don't remember going to the Chez Lucien Hotel.*
- Q. *You have a provincial court designation on your licence, provincial judge's licence.*
- A. *Yes. It is a PJO number.*
- Q. *You do not recall going to the Chez Lucien.*
- A. *No, I don't.*
- Q. *Do you recall any place else you went that evening?*
- A. *I am not too sure. I believe I went to Hull but I am not really too sure whether I did or I didn't.*
- Q. *I see.*
- A. *I know — I believe I got home, as I understand, in the early hours, two or three o'clock in the morning and my car was there in the driveway the next morning.*
- Q. *Was there any reason why you do not recall?*
- A. *Well, I was, from the time I got this letter, I think — I think I just kept drinking.*
- Q. *It sounds as if you got snapped, if I can use that term. You did more than drinking, it sounds as if you had a fair load on.*
- A. *I have often heard evidence of it in court and wondered whether people couldn't remember such things, but now I am aware it can happen.*
- Q. *But, in any event, you do not recall getting home that night?*
- A. *I do not."*

He made the following replies on this subject to questions put to him during cross-examination by Commission counsel:

- "Q. *Now, you indicated in your evidence that you walked around for a little while and you went into the Carleton Towers. Is that correct?*
- A. *Yes.*

- Q. *And had a few drinks. Where were you about midnight?*
- A. *I can't tell you, sir, I don't - - -*
- Q. *You do not remember the Chez Lucien?*
- A. *No.*
- Q. *And, then, you believe you went to Hull. Is that right?*
- A. *I believe I did but I am not sure.*
- Q. *Were you driving your car?*
- A. *I was driving my car, yes.*
-
- Q. *Do you recall driving?*
- A. *No, I don't recall.*
- Q. *Do you recall he testified he followed you around various streets and the distance from the Beacon Arms to the vicinity I believe of Bronson and Carling was about three or four miles. Do you recall that evidence?*
- A. *I don't recall exactly what his evidence was. I do recall him saying I drove around, yes, Mr. Bynoe.*
- Q. *He said you used the telephone at Mac's Milk Store? Do you recall that?*
- A. *I recall that, yes.*
- Q. *And then do you recall he said that you drove north on Bronson Avenue, made a left turn and proceeded west on Raymond Street, parked your vehicle in a vacant lot on Raymond and Bell; got out of the vehicle and walked north on Bell Street and entered the lobby of 211 Bell. Do you recall that?*
- A. *I recall him saying something like that.*
- Q. *Did you do that?*
- A. *I don't know.*
- Q. *Tell me, does the address 211 Bell mean anything to you?*
- A. *I had been to the address at 211 Bell previously, yes.*

- Q. *Were you aware of the fact that a few days prior to that in fact six or seven days that Lynne Martineau had pleaded guilty to keeping a common bawdy house in apartment 401 at 211 Bell Street?*
- A. *No, I was not aware of that.*
- Q. *You were not aware of that. Do you have any reason or any facts on which you can contradict the statement of Constable Scharf that he followed you in the manner he described and that you, in fact, went to 211 Bell Street?*
- A. *I have nothing to contradict it.*
- Q. *Tell me, you were not looking for Lynne Martineau that night, were you?*
- A. *I don't know what I was looking for that night. Try and remember this letter that I got, if you will, please.*
- Q. *Do you also recall me asking Constable Scharf if he had occasion during the course of the evening to observe you — the judge — walk? 'Did you see the judge walk? He answered 'Yes, sir'. 'Q. Did you notice anything unusual about his walk?' 'A. No, I paid no attention to his walk, sir.' 'Q. Did you observe anything unusual about his driving?' 'A. No, sir' Do you recall those questions being asked and those answers being given?*
- A. *I recall questions and answers to that effect, yes.*
- Q. *Isn't that slightly at variance with the suggestion that you were — what did you say — 'snapped or drunk' at the time and that you have no recollection of what happened?*
- A. *Not in my view, it's not."*

The circumstances disclosed in this portion of the evidence raise a number of questions. The actions of the Judge that night appear inconsistent with those that might be expected from one who had "no idea" of any personal conduct which might form the basis

of a complaint against him. The inference might be drawn that he was indeed aware of the "course of personal conduct" to which Chief Judge Hayes had referred. It might also be inferred that he followed the route he did in search of one or more persons (and Lynne Martineau is clearly one) with whom he had association who might inform him about what had transpired or might have been disclosed to the authorities respecting his conduct. The fact that Judge Williams chose to offer no explanation for his actions on that night, leaves me with a feeling of disquiet.

The Position of a Judge

The question of whether Judge Williams' conduct constitutes misbehaviour calling for his removal from office must be answered by reference to the standards of conduct required of a judge. While there are no written canons governing judicial conduct in Canada, there are established principles and underlying concepts against which a judge's conduct may be measured.

Fundamental to the ideal of justice, and no less so because it is so often repeated, is the principle that justice should not only be done but manifestly be seen to be done. And, because a judge's role is so intimate a part of the process of justice that his misbehaviour must inevitably reflect upon it, it is equally fundamental that a judge's conduct should be free from impropriety and the appearance of impropriety. That general principle is basic to all aspects of judicial behaviour — not only to a judge's behaviour in the performance of the duties of his office but also to his behaviour in his personal life.

A judge's responsibility as a judge does not begin or end at the courtroom door. His behaviour off the bench is not wholly outside his position as a judge and may fall within the realm of legitimate public concern. If he engages in irresponsible or improper conduct — conduct which causes others fairly to question his character, his honour, his integrity, his morals, his sense of decency — he loses respect, not only for himself as a person, but for the court over which he presides and the judicial process. Such conduct, even though in private life, may be at variance with his obligations as a judge and may affect his ability to discharge fully and completely his duties on the bench. Public knowledge of improper conduct by a judge can only erode public confidence in him as a judge and in the administration of justice.

The confidence of the public in the administration of justice is of paramount importance. That confidence is vital to our democratic system of government. And public confidence in the judiciary — in its integrity, its impartiality, its independence, its moral authority — is indispensable to the administration of justice. In the ultimate

analysis the authority of our courts rests on public acceptance of judicial decisions — and that acceptance in turn depends on public confidence in our judges.

Every judge in his judicial and non-judicial activity has a responsibility to preserve and enhance public confidence in the administration of justice. He serves as an exemplar of justice, to much of the public its personification, and confidence in our system of justice in large measure depends on him. When he engages in misconduct, the magnitude of the misconduct may be measured by the extent to which he has impaired the confidence of the public in himself as a judge and in the administration of justice.

The Honourable I.C. Rand stated the underlying principles of which I have been speaking, in these terms:

“He (the judge) is sworn to the administration of Justice as our evolving ethical intelligence has fashioned it; but that obligation is not limited to the adjudicative role. He comes under another but equally sensitive duty, to respect the Law which he administers and to promote its processes to their proper ends.

. . . .

When the function of the judge is fully sensed, to hear, weigh, and, according to Law, to decide justly, to do so in a manner which fair-minded persons acting normally, expressing in fact enlightened public opinion, would approve, determining unfitness in a judge, at least in the statement of principle, does not perhaps present as much difficulty as might be imagined. That principle would seem to be this: would the conduct, fairly determined in the light of all circumstances, lead such persons to attribute such a defect of moral character that the discharge of the duties of the office thereafter would be suspect?; has it destroyed unquestioning confidence of uprightness, or moral integrity, of honesty in decision, the elements of public honour?

. . . .

There are other forms of misconduct which might bring about such a loss of confidence; persistent neglect of duty, persistent incapacity arising from drink or similar causes; deliberate refusal to accept and apply unquestioned rules of Law to the detriment of suitors; following a life of profligacy; these matters of difficult determination would depend upon their circumstances: . . . ”. (Inquiry re The Honourable Leo A. Landreville (1966). p.95, 97).

If the standards of conduct imposed on a judge in his personal life are more exacting than those imposed on other citizens, if more is expected of him, it is because of the nature of his function as a judge. He must sit in judgment on others, mete out punishment, render decisions affecting liberty and property. To discharge his official duties he requires the confidence and respect of those before him in the courtroom and the public generally. His misbehaviour, even if it is in his private life, can damage that essential sense of trust and thus adversely affect his judicial work and the justice system. It is for such reasons that a judge's conduct should be, as far as possible, beyond reproach.

But in deciding whether specific conduct constitutes misbehaviour requiring a judge's removal from office under the terms of The Provincial Courts Act, it must be remembered that men and women who assume judicial office remain human — and “in a world of imperfect humans, the faults of human clay are always manifest”. There must be allowance for forgivable error; human frailties and fallibilities must not be forgotten; none of us can attain the ideal. To warrant removal misbehaviour should be more than indiscretion or error in judgment. But whether in a given case misbehaviour for non-judicial activity justifies removal from office must normally depend on circumstances which cannot be covered fully by any statement of general principle. There are no tests of misbehaviour capable of exact definition. Nor are there standards of judicial conduct which admit of quantitative measurement. Each case must ultimately depend on the nature of the conduct, all the facts surrounding it, its effect on the judge's ability to perform his official duties, and the extent to which it has impaired public confidence in the judge and

in the administration of justice. As in so many issues in law and ethics, it becomes a matter of degree, a question of where the line is to be drawn.

Conclusions on Judge Williams

With those general observations in mind, I return to the conduct of Judge Williams which forms the subject matter of this inquiry. On the circumstances established by the evidence, there can be no doubt that the course of conduct in which Judge Williams engaged, considered in its totality and viewed in all its aspects, violates the standards of propriety required of a judge and expected of him.

The question which remains is whether such misbehaviour requires his removal from the bench. That question should be considered not only in reference to his position as a judge but, more specifically, in the context of a judge of a criminal court who has particular duties and responsibilities in the criminal justice system.

The Criminal Division of the Provincial Court is of manifest importance to the administration of justice in Ontario. Under the Criminal Code and the penal provisions of numerous statutes, jurisdiction is vested in it to hear and determine a multitude of criminal and quasi-criminal matters. This Court also has jurisdiction over a host of other issues which arise during the criminal justice process and are of fundamental importance to the liberty and property of individuals, such as applications for bail, preliminary hearings, issuance of subpoenas and search warrants. And it is relevant to note, judges of this Court try persons charged with such offences as keeping common bawdy houses, being found in common bawdy houses, procuring, living wholly or in part on the avails of prostitution, soliciting and other offences regularly associated with or related to prostitution.

The volume of cases heard in the Provincial Courts (Criminal Division) exceeds by far that of any other court. It is there that most citizens have their only exposure to the law in action and the respect they hold for our system of justice can often hinge on that experience. With their greater direct contact with the public, provincial judges have a critical role to perform in maintaining and enlarging public confidence in our criminal justice system. Mr. Justice Grant in discussing the responsibilities of provincial judges (or magistrates as they were then) and the function of their court, made the follow-

ing observations which I respectfully adopt:

"It is the training school in which young police officers serve their apprenticeship and are guided in the proper manner in which to perform their duties and present their findings in a court of law. It is the forum in which the youthful barrister seeks justice for his first client and where in a practical way gains his first impressions of our courts of justice. It is the birthplace of his legal career and where the shape of his professional integrity may be moulded by the adjudication of an upright judge or blighted by a discovery of any impropriety or injustice in the court. It is here that the Crown protects society by seeking to have the offender convicted by proper methods and punished in a fashion to deter future offences and to insist that the innocent are not opposed. Here the accused is entitled to expect a presiding justice who will consider his case free from any pre-conceived or irrelevant considerations, without partiality, and in the best traditions of our jurisprudence. The quality of the judiciary to a great extent determines the quality of justice. The court is more than an instrument of justice. It also enjoys an important educational and symbolic significance. It is called upon to articulate the community's views concerning the individual's rights in relation to the rest of society. Courts can only be as effective as the judges who preside over them. It is because of this that society expects much of its magistracy." (Inquiry re Magistrate Frederick J. Bannon (1968) pp.51-2.)

Once the functions of the Provincial Court (Criminal Division) and the responsibilities of its judges are recognized, the question of whether Judge Williams' removal is required admits of only one answer. The consequences of his misbehaviour are clearly relevant and pertinent to his official duties and bear upon his ability to discharge those duties. The fact that he consorted with prostitutes, dealt with procurers, placed his court under a cloud of suspicion, condoned criminal activities, showed disrespect for the criminal law, and displayed a lack of regard for the dignity and honour of his judicial position, must seriously diminish public respect and con-

fidence in him and severely impair his ability to function as a judge of a criminal court.

Public confidence requires that he be impartial and objective and, equally important, be perceived as such; there should be confidence in the impersonality and reasoned foundation for judicial decision. Judge Williams' misconduct affects public perception of him as a judge able to decide impartially and impersonally. Were he to return to the bench, he would inevitably be viewed by many, in and out of the courtroom, as a judge who by his own conduct has disqualified himself from judging the conduct of others. And his rulings on many matters would be suspect. One way or another, whether interpreted as lenient or strict, there is the manifest danger to the criminal justice process that his decisions will be seen as influenced by his past conduct or associations or public knowledge of them. In varying degrees, those before the court — the accused, Crown counsel, defence counsel, police officers, witnesses, spectators — and the public generally will think his judicial determinations are affected or may be affected by extraneous considerations.

Judge Williams, it should be said, must have been aware — every judge is — that his personal conduct is important to his judicial office. He knew that his activities could not meet the standards required of a judge and were clearly incompatible with the character of his judicial duties; he knew, or should have known, that those activities and associations could create the appearance of improper influence and subject him to the threat of blackmail. Moreover, he knew that if his conduct were discovered by the police or if it otherwise came to the attention of members of the public, it would, by its very nature, disparage his office as a judge, throw suspicion on his judicial actions, and interfere with his ability to fulfil his functions.

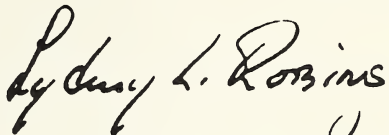
Those risks were implicit throughout the entire course of the Judge's conduct. They were indeed obvious and their implications ought to have been recognized. Now, regrettable as it is in view of his past service on the bench, it is inescapable that his position as a judge is untenable. Plainly stated, he has destroyed his effectiveness and usefulness as a judge.

In all the circumstances it must be concluded that Judge Williams' misbehaviour has been such that it does not serve the best interests of the administration of justice in Ontario that he continue as a Provincial Judge of the Provincial Court (Criminal Division). The vital importance of public confidence in the administration of justice and in the honour and integrity of the judiciary cannot be over emphasized. That confidence is indispensable to justice itself.

Conclusion

It is for these reasons I report that Provincial Judge Harry J. Williams by his misbehaviour has rendered himself subject to being "removed from office before attaining retirement age" pursuant to section 4 of The Provincial Courts Act.

All of which is respectfully submitted.


Commissioner 

Osgoode Hall,
Toronto.

February, 1978.

Appendix A

Staff of Commission

B. Clive Bynoe, Q.C.

William Roy Bennett

Louis Okmanas

Norma Pullen

Commission Counsel

Commission Investigator

Commission Investigator

Commission Secretary

Appearances

W.D. Chilcott, Q.C. and
William J. Simpson

J.Peter Vice and
Peter G.R. Rock

Bruce F.L. Rice

Paul H. Coulson

John B. Piazza

Counsel for Judge
Harry J. Williams

Counsel for Lynne
Martineau

Counsel for Miss X

Counsel for Edward
Chomyshyn

Counsel for Josephus
Lewis

Appendix B

Public hearings were held at Board Room 2, Canada Labour Relations Board, Lester B. Pearson Building, Ottawa, Ontario, December 12th to 15th, 1977.

Appendix C

Witnesses called are listed below:

Grace Lynne Martineau

Brian Bruce Scharf

Stanley Bruce Keeler

Miss X

Edward Chomyshyn

Josephus Delacore Lewis

The Honourable George James McIlraith, P.C., Q.C.

Richard Ernest Baron Brocklesby, Q.C.

Lynne Coulter

Moyra Nicholson

Leonard Shore

Provincial Judge Patrick Daniel White

Provincial Judge Joffre A. Archambault

Provincial Judge Bernard Ryan

Arnell Goldberg, Q.C.

M. Murray Ages

Paul Belanger

Daniel Hugh McGuire, Q.C.

Harry J. Williams

Appendix D

List of Exhibits

	No.
Letters Patent of Commission	1
Order-in-Council No. 2648/77	2
Photographs of 1 Nicholas Street, various portions of the premises of the Provincial Court and the chambers of Judge Williams	3 - 13
Photocopy photograph of Sandy Mitchell (Cunningham)	14
Photographs of 211 Bell Street	15 - 18
Photocopy photograph of Bob Mitchell	19
Photocopy photograph of Josephus Lewis	20
Letter from Chief Judge F.C. Hayes to Judge Harry C. Williams dated July 20th, 1977, with letter attached from Chief Judge F.C. Hayes to B. Clive Bynoe, Q.C. dated November 29th, 1977.	21
Photocopy photograph of Lynne Martineau	22
Record of criminal convictions of Miss X	23
Photocopy of page of trick book	24
Information dated February 26th, 1975, re Miss X	25
Photocopy photograph of William Boone	26
Statement of Commission Investigator re William Boone	27
Photocopy of index card of Lynne Martineau	28
Photocopy of portion of trick book of Lynne Martineau	29
Letter dated 8th December, 1977, from A.E. Honeywell to the Commissioner.	30

